

April 16, 1996

VIA UPS OVERNIGHT

Peter D. Pockels  
567 Doane Street  
San Lorenzo, CA 94580

Daniel A. Smith  
901 W. 6th Street  
Antioch, CA 94509

Jerry Deschler  
c/o Daniel A. Smith  
901 W. 6th Street  
Antioch, CA 94509

Joe DiPrisco, Secretary-Treasurer  
Teamsters Local Union 302  
2100 Merced Street, Suite B  
San Leandro, CA 94577

Rome Aloise, Secretary-Treasurer  
Teamsters Local Union 853  
2100 Merced Street, Suite B  
San Leandro, CA 94577

Re: Election Office Case Nos. P-664-LU302-CSF, P-726-LU302-CSF

Gentlemen:

Daniel A. Smith and Peter D. Pockels, two of three Local Union 302 members running for the local union's single delegate position, filed pre-election protests pursuant to Article XIV, Section 2(b) of the *Rules for the IBT International Union Delegate and Officer Election ("Rules")*. Both protesters allege violations of the *Rules* with respect to a campaign mailing entitled, "Oh No, Not Again!" from the Committee to Elect a Responsible Delegate for Local 302 ("Committee"), which attacks their candidacies. In P-664-LU302-CSF, Mr. Smith, candidate for delegate on the Ron Carey slate, alleges that the mailing was "produced by what I believe is a ghost committee," contains "half truths and lies," and may involve improper use of mailing labels printed by the local union. He lodges his protest against the Committee and against the third Local Union 302 delegate candidate, Joseph DiPrisco.<sup>1</sup> In P-726-LU302-CSF, Mr. Pockels,

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<sup>1</sup>Mr. DiPrisco is the local union's secretary-treasurer and is running as an independent.

an independent candidate for delegate, alleges that the campaign mailing was written by Rome Aloise, secretary-treasurer of Local Union 853, with Mr. DiPrisco's help, using Local Union 853's computer and support staff. The Election Officer consolidated these protests for consideration because they arise from the same mailing.

Mr. DiPrisco responds that he and Mr. Aloise collaborated on the "Oh No, Not Again!" mailing and sent it to Local Union 302's membership as part of Mr. DiPrisco's campaign. The mailing at issue was the first of two mailings that he sent to all local union members. Mr. DiPrisco states that Local Union 302 printed the mailing labels and, in accordance with its standard policy, did not charge for them. He denies that Local Union 853 resources were used. He also contends that the protests are untimely.

These protests were investigated by Regional Coordinator Matthew D. Ross.

Documentation furnished by Mr. DiPrisco to the Regional Coordinator shows that the "Oh No, Not Again!" mailing was delivered to Accent Printing for typesetting, printing, and folding services on March 14, 1996. The mailing was processed by the Handled With Care mailhouse, whose invoice shows that Mr. DiPrisco made a deposit to cover costs on March 15. This was a third-class, bulk-rate mailing. The record does not reflect when it was delivered to the post office, when the post office actually put it in the mail, or when members received it.

The investigation also revealed that Local Union 302 printed the labels for the mailing without charge. Mr. Aloise states that it is the policy of Local Unions 302 and 853 not to charge candidates for the production of address labels requested for campaign mailings.

Before turning to the claims of the protesters, it is necessary to address Mr. DiPrisco's assertion that the protests are untimely. Article XIV, Section 2(b) of the *Rules* requires protesters to file "within two (2) working days of the day when the protestor becomes aware or reasonably should have become aware of the action protested." Mr. Smith claims that he became aware of the mailing on March 22, 1996, filled out a protest form that day, and mailed it to the Election Officer on the next, March 23. Mr. Pockels filed his protest on March 26. He states that he did not receive the mailing himself and learned about it on March 25 from another member. He also states that he received an anonymous telephone call on the night of March 25, which suggested that the mailer was produced by Mr. Aloise using Local Union 853 resources.

As noted above, there is no evidence as to when the mailhouse actually delivered the mailing to the post office, when the post office actually put it in the mail, or how long this third-class, bulk-rate mailing took to be delivered. The Election Officer credits Mr. Smith's statement that he did not

receive the mailing until March 22. The Election Officer also credits Mr. Pockels' statement that he did not learn of the mailing until March 25, when he also received a phone call purporting to supply information about it. Thus, the Election Officer finds that these protests are timely.

Turning to the merits, the *Rules* address "Candidate Literature and Mailings" in Article VIII, Section 7. The basic rule is that:

Each candidate shall be permitted a reasonable opportunity, equal to that of any other candidate, to have his/her literature distributed by the Union, at the candidate's expense. This means: (a) each candidate is entitled to a reasonable number of mailings, whether or not any other candidate made such request(s); (b) when the Union authorizes distribution of campaign literature on behalf of any candidate, similar distribution under the same conditions and costs shall be made for any other candidate, if requested . . .

Mr. Smith contends that the mailing was issued by a "ghost committee" without identification to Mr. DiPrisco. The *Rules* do not require candidates to put their names on campaign literature and they do not require campaign committees to have or disclose allegiances.

Mr. Smith also contends that "this mailer was comprised of half truths and lies." The Election Officer has consistently held that the *Rules* "neither prohibit nor regulate the content of campaign literature." Rogers, P-518-LU373-SOU (February 21, 1991). Rather, as the Election Officer recently stated, "[t]he goal to be protected is free speech." Newhouse, P-388-LU435-RMT (February 21, 1996). See Landwehr, P-201-LU795-MOI (November 15, 1995); Braxton, P-304-LU623-PHL (May 21, 1991) ("The model for free and fair Union elections is that of partisan political elections . . . The cardinal principle is that the best remedy for untrue speech is more free speech, with the electorate being the final arbiter.").

Lastly, Mr. Smith raises a question about the use of mailing labels printed by the local union. As the portion of the *Rules* quoted above makes clear, local unions have an obligation to furnish candidates with equal opportunities to have campaign literature distributed by the local union at the candidate's expense and to offer equal conditions and costs to each candidate, on request. Therefore, it did not violate the *Rules* for Local Union 302 to furnish Mr. DiPrisco with labels without charge, as long as it did so for all other candidates, if requested. There is no allegation in this record that any other candidate was denied free labels. See Baudo, P-680-LU344-SCE (April 3, 1996) (no evidence that local union did not offer equal conditions with respect to campaign mailing). In fact, Mr. Pockels acknowledged that he was not charged for mailing labels in the last local union officers election, which corroborates Mr. Aloise's statement that local union policy is not to charge for them.

Mr. Pockels bases his charge of improper use of local union resources on the anonymous call that he claims receiving on March 25. He states that the caller asserted personal knowledge that Mr. Aloise had helped Mr. DiPrisco write the mailing, that it was done on a computer at Local Union 853, and that a Local Union 853 staff member assisted with the lay-out. The caller did not identify him/herself and did not identify the staff member who purportedly assisted Mr. Aloise.

Mr. Aloise admits helping to prepare the mailing, but denies that it was prepared at Local Union 302 or 853 or that it involved local union staff. In evaluating these conflicting versions, the Election Officer is unable to assess the credibility of Mr. Pockels' anonymous caller or to check further into the caller's story, due to the caller's failure to identify the local union staff person allegedly involved, or any other witness. In the face of Mr. Aloise's denial, the Election Officer finds that this allegation is not supported.

For the reasons given above, the protest is DENIED.

Any interested party not satisfied with this determination may request a hearing before the Election Appeals Master within one day of receipt of this letter. The parties are reminded that, absent extraordinary circumstances, no party may rely upon evidence that was not presented to the Office of the Election Officer in any such appeal. Requests for a hearing shall be made in writing and shall be served on:

Kenneth Conboy, Esq.  
Latham & Watkins  
885 Third Avenue, Suite 1000  
New York, NY 10022  
Fax (212) 751-4864

Copies of the request for hearing must be served on the parties listed above as well as upon the Election Officer, 400 N. Capitol Street, Suite 855, Washington, DC 20001, Facsimile (202) 624-3525. A copy of the protest must accompany the request for a hearing.

Sincerely,

Barbara Zack Quindel  
Election Officer

cc: Kenneth Conboy, Election Appeals Master  
Matthew D. Ross, Regional Coordinator